

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In the Matter of)
)
)
Petition for Arbitration of Interconnection)
Agreement between Time Warner Cable)
Information Services (South Carolina), LLC,)
doing business as Time Warner Cable and)
Sandhill Telephone Cooperative, Inc.)
)

Pursuant to Section 252(b) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. § 252(b), Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable (“Time Warner Cable”), files this petition for arbitration with the Public Service Commission of South Carolina (“Commission”) seeking resolution of the open issue arising between Time Warner Cable and Sandhill Telephone Cooperative, Inc. (“Sandhill”) in the negotiation of an Interconnection Agreement (“ICA”). Time Warner Cable states as follows:

HISTORY OF NEGOTIATIONS AND LEGAL BACKGROUND

1. Time Warner Cable is a limited liability company organized under the laws of the State of Delaware, maintaining its principal place of business at 60 Columbus Circle, New York, New York 10023. Time Warner Cable’s main offices in the State of South Carolina are at 3347 Platt Springs Road, West Columbia, South Carolina 29170. Time Warner Cable is certified to provide telecommunications services in South Carolina pursuant to Commission Order Numbers 2004-213, 2005-385(A) 2009-356(A), 2011-393, and 2011-507.

2. Time Warner Cable's representatives in this proceeding are as follows:

Frank R. Ellerbe, III
Bonnie D. Shealy
Robinson McFadden & Moore, P.C.
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, South Carolina 29202
Telephone (803) 779-8900
Facsimile (803) 252-0724
fellerbe@robinsonlaw.com
bshealy@robinsonlaw.com

and

Julie P. Laine
Time Warner Cable
60 Columbus Circle
New York, New York 10023
Telephone (212) 364-8482
Fax: (704) 972-6239
Julie.Laine@twcable.com

3. Sandhill is an incumbent local exchange carrier ("ILEC") as defined in 47 U.S.C. § 251(h) and is certified to provide telecommunications services in the State of South Carolina. Upon information and belief, Sandhill maintains its principal place of business at 122 South Main Street, Jefferson, South Carolina 29718.

4. The name, address, and contact information for Sandhill's primary representatives during the negotiations with Time Warner Cable have been:

Irvin B. Williams
Mr. Clyde Watson
Sandhill Telephone Cooperative, Inc.
Post Office Box 519
122 South Main Street
Jefferson, South Carolina 29718

and

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Telephone (803) 799-9800
Facsimile (803) 753-3219
jbowen@mcnair.net
pfox@mcnair.net

5. Time Warner Cable is certificated to provide competitive, facilities-based intrastate local telecommunications services in Sandhill's service area pursuant to Order Number 2011-393, Docket Number 2011-52-C, on June 7, 2011. The Commission issued Order Number 2011-507 Granting Sandhill's Petition for Clarification on July 20, 2011.

6. Order Number 2004-213 granted Time Warner Cable a certificate of public convenience and necessity ("Certificate") to provide "competitive, facilities-based intrastate local and interexchange voice telecommunications services" within South Carolina.¹ Order No. 2005-385 which amended Time Warner Cable's Certificate to include the service area of Alltel South Carolina, held that the Company "continues to meet all statutory requirements for the provision of services as a CLEC...."² Amended Order Number 2009-356(A) held that Time Warner Cable's Digital Home Phone Service is a regulated telecommunications service as defined by S.C. Code Section 58-9-10 and that Time Warner Cable "continues to meet all statutory requirements for the provision of service as a CLEC as delineated in S.C. Code Ann. Section 58-9-280."³

7. Order Number 2011-507 granting Sandhill's Petition for Clarification specifically held that the authority granted to Time Warner Cable to provide service in Sandhill's service

¹ Order Number 2004-213, p. 17, ordering ¶ 1.

² Order Number 2005-385(A), p. 5, ¶ 6.

area is the same authority, terms and conditions granted by Order Number 2009-356(A) Order Number 2009-356(A) held that (1) Time Warner Cable is a provider of local exchange and interexchange telecommunications services, (2) Time Warner Cable is a “telephone utility” as defined by S.C. Code Section 58-9-10, and (3) Time Warner Cable’s Digita HomePhone Service is a regulated telecommunications service as defined by S.C. Code Section 58-9-10.⁴

8. Time Warner Cable is currently transitioning from providing its retail telephone services using an unaffiliated wholesale telecommunications carrier (such as Sprint) to an arrangement where Time Warner Cable interconnects and exchanges traffic directly with ILECs in South Carolina pursuant to its own ICAs. The Commission approved direct ICAs between Time Warner Cable and Horry Telephone Cooperative, Inc.; Hargray Telephone Co., Inc.; Verizon South, Inc.; BellSouth Telecommunications, Inc., dba AT&T; and Bluffton Telephone Co., Inc. Time Warner Cable also is seeking to interconnect directly with Farmers Telephone Cooperative, Inc.; Fort Mill Telephone Company, Inc.; Home Telephone Company, Inc.; and PBT Telecom, Inc. (collectively “RLECs”).⁶

9. On June 9, 2011, Time Warner Cable formally requested to negotiate and enter into an interconnection agreement with Sandhill pursuant to Section 251(a) and (b) of the Communications Act. A copy of the June 9, 2011, letter to Sandhill is attached as **Exhibit 1**.

10. On July 5, 2011, Lans Chase of John Staurulakis, Inc. (“JSI”) informed Time Warner Cable that it was Sandhill’s position that Time Warner Cable’s request did not fall within Section 251 because Time Warner Cable purportedly is not requesting interconnection for the

³ Order Number 2009-356(A), p. 20 & 22.

⁴ Order No. 2009-356(A), p. 20 and 22.

⁶ Order Number 2011-765 ruled on Time Warner Cable’s petitions for arbitration of interconnection agreements with the RLECs. Time Warner Cable filed a petition for reconsideration of that Order that was denied. On November 11, 2011, Time Warner Cable filed a complaint for declaratory and injunctive relief

purpose of providing telecommunications service over the interconnection arrangement. A copy of the July 5, 2011, letter from Mr. Chase is attached as **Exhibit 2**.

11. Time Warner Cable responded to Mr. Chase on July 13, 2011, by letter and renewed its request to begin negotiating an interconnection agreement. A copy of the July 13, 2011, letter is attached as **Exhibit 3**.

12. On July 19, 2011, counsel for Sandhill responded to Time Warner Cable indicating that Sandhill would not agree to negotiate an ICA. A copy of the July 19, 2011, letter is attached as **Exhibit 4**.

13. Although the Federal Communications Commission has not conclusively resolved the regulatory status of retail VoIP service, the Federal Communications Commission (“FCC”) has addressed interconnection rights in the VoIP context on a number of occasions. This precedent makes clear that Time Warner Cable has the unequivocal right to interconnect and exchange traffic with Sandhill.

14. In particular, the FCC has ruled that a voice provider like Time Warner Cable is entitled to interconnection under Section 251, notwithstanding its reliance on VoIP technology, when it elects to operate as a regulated telecommunications carrier. The FCC has held that “if a provider of interconnected VoIP holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements,” it is entitled to invoke the rights conferred under Section 251. *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 38 n.128 (2005).

pursuant to 47 U.S.C. § 252(e)(6) to challenge the Commission’s ruling in the United States District Court for the District of South Carolina, Columbia Division.

15. Moreover, the FCC has made clear that an entity's possession of a CPCN and its publication of tariffs constitute sufficient evidence of its status as a telecommunications carrier under federal law, not just under state law. The FCC has consistently relied on a provider's regulatory status under state law to determine its regulatory status under federal law. For example, in *Fiber Techs. Network L.L.C. v. N. Pittsburgh Tel. Co.*, Fiber Technologies offered proof of its status as a "telecommunications carrier" to obtain federal pole access rights by submitting its certificates from the Pennsylvania Public Utilities Commission and its publicly filed tariff. The FCC concluded that Fiber Technologies' possession of valid state authorizations to provide telecommunications services, together with its tariff, constituted presumptive evidence of its status as a telecommunications carrier entitled to nondiscriminatory access pursuant to 47 U.S.C. § 224. *Fiber Techs. Network L.L.C. v. N. Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392 (2007).

16. The FCC made a similar finding in *Bright House Networks, LLC v. Verizon Cal., Inc.*, when it held that a provider's state-issued CPCN is "public notice of . . . [its] intent to act as a common carrier" under federal law. *Bright House Networks, LLC v. Verizon Cal., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 ¶ 39 (2008), *aff'd*, *Verizon Cal., Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009). Significantly, the D.C. Circuit upheld the FCC's decision in the *Bright House* case, rejecting the argument that VoIP providers' CLEC affiliates "are not 'telecommunications carriers' within the meaning of the Act." *Verizon Cal., Inc. v. FCC*, 555 F.3d 270, 275 (D.C. Cir. 2009). The court instead held that the FCC's conclusion was reasonable, because the FCC based its decision on the fact that the providers in that case (1) self-certified that they would operate as common carriers; (2) entered into ICAs; and (3) held CPCNs. *Id.*

17. In addition, the FCC has ruled that CLECs such as Time Warner Cable are entitled to interconnect with ILECs for the specific purpose of exchanging VoIP traffic. The FCC clarified that the regulatory classification of retail VoIP service has no bearing on interconnection rights. *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 15 (WCB 2007). The FCC recently reaffirmed that proposition in a further declaratory ruling. *See Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended, et al.*, Declaratory Ruling, 26 FCC Rcd 8259 ¶ 26 (2011) (“*CRC Declaratory Ruling*”).

18. The critical point is that if a telecommunications carrier is entitled to interconnect to enable a *non-regulated* entity to deliver VoIP traffic, then such a carrier *a fortiori* is entitled to interconnect when the retail VoIP service is offered as a certificated telecommunications service. As a result, Time Warner Cable is entitled to all of the benefits afforded under Section 251 as a telecommunications carrier. Indeed, other interconnected VoIP providers, such as Cox Communications, have chosen to provide retail VoIP services by operating as regulated telecommunications carriers for many years. These providers thus directly interconnect and exchange traffic with ILECs, just as Time Warner Cable seeks to do in Sandhill’s territory (and as it already operates in other areas of the State, as well as Wisconsin).

JURISDICTION

19. Section 252(b)(1) of the Communications Act allows either party to the negotiation to request arbitration during the period from the 135th to the 160th day after the date on which an ILEC receives a request for negotiation. 47 U.S.C. § 252(b)(1). If an incumbent carrier refuses to negotiate, as has occurred here, then the arbitration provisions in Section 252(b)(1) of the Communications Act are triggered after the statutorily prescribed time period has passed.⁷

20. Time Warner Cable's request for adoption of ICA was sent to Sandhill on June 9, 2011, via overnight mail. *See Exhibit 1*. Accordingly, this petition is timely filed. Time Warner Cable therefore requests that the Commission resolve the open issue, discussed below, relating to Time Warner Cable's request for interconnection and services from Sandhill.

21. Pursuant to 47 U.S.C. § 252(b)(2)(B) and S.C. Code Ann. § 58-4-10, Time Warner Cable is providing a copy of this Petition and the accompanying documentation to Sandhill and the Office of Regulatory Staff on or before the day on which this Petition is filed with the Commission.

22. Pursuant to 47 U.S.C. § 252(b)(4)(C), the Commission must render a decision in this proceeding within nine months after the date on which the local exchange carrier received the request under this section. Therefore, the Communications Act requires the Commission to render a decision in this proceeding not later than March 10, 2012.

⁷ *CRC Declaratory Ruling*, ¶ 26.

ISSUE FOR ARBITRATION

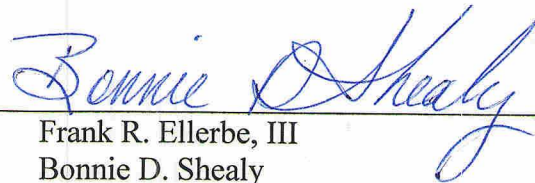
23. Sandhill's refusal to honor Time Warner Cable's request to negotiate an interconnection agreement on the grounds that Time Warner Cable is not a "telecommunications carrier" violates 47 U.S.C. § 251 and 252 and is contrary to settled FCC precedent.

WHEREFORE, Time Warner Cable requests that the Commission arbitrate the open issue set forth in this petition, to find such issue in Time Warner Cable's favor, and compel Sandhill to interconnect and exchange local traffic with Time Warner Cable pursuant to an arbitrated ICA. In addition, Time Warner Cable requests such other relief as the Commission deems proper under the circumstances.

Dated this 14th day of November, 2011.

ROBINSON, MCFADDEN & MOORE, P.C.

By



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bshealy@robinsonlaw.com

Attorneys for Time Warner Cable Information Services,
(South Carolina), LLC

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EXHIBIT 1

**TIME WARNER CABLE LETTER TO
SANDHILL TELEPHONE COOPERATIVE
DATED JUNE 9, 2011**

60 Columbus Circle
New York, NY 10023
Tel 212.364.8440
Fax 704.973.6222
maribeth.bailey@twcable.com

Maribeth Bailey
Sr. Director, Interconnection Policy, Regulatory



June 9, 2011

VIA OVERNIGHT MAIL

Mr. Clyde Watson
Vice President
Sandhill Telephone Cooperative, Inc.
122 S Main Street
Jefferson, SC 29718

Re: Request for Interconnection Pursuant to 47 U.S.C. §§ 251(a) and (b)

Dear Mr. Watson:

By this letter, Time Warner Cable Information Services (South Carolina), LLC ("TWCIS (SC)") formally requests to negotiate and enter into an agreement with Sandhill Telephone Cooperative, Inc. ("Sandhill") for interconnection and related services. In particular, TWCIS (SC) seeks an agreement that would facilitate the exchange of traffic between the companies' networks in accordance with Sandhill's duties to interconnect and establish reciprocal compensation arrangements with, and to provide number portability and dialing parity to, competitive local exchange carriers pursuant to Sections 251(a) and (b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §§ 251(a), (b).

Please contact me at your earliest convenience so that we may begin negotiating an agreement by which Sandhill would carry out its duties under Sections 251(a) and (b) of the Act. Section 252 of the Act provides that TWCIS (SC) may petition the state commission to arbitrate an interconnection agreement between the 135th and 160th day after Sandhill receives this request. Should our companies be unable to successfully conclude negotiations by that time, TWCIS (SC) will treat the date of this letter as the starting point for determining the statutory window in which to seek arbitration.

Thank you in advance for your cooperation.

Sincerely,


Maribeth Bailey

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Sandhill Telephone Cooperative, Inc.)
)

EXHIBIT 2

**JSI LETTER TO TIME WARNER CABLE
DATED JULY 5, 2011**



6849 Peachtree Dunwoody Road
Building B-3, Suite 200, Atlanta, Georgia 30328
phone: 770-569-2105, fax: 770-410-1608

July 5, 2011

VIA ELECTRONIC MAIL & US MAIL

Ms. Maribeth Bailey
Sr. Director, Interconnection Policy, Regulatory
Time Warner Cable Information Services (South Carolina)
60 Columbus Circle
New York, NY 10023

*Re: TWCIS (SC) Request for Interconnection with Sandhill Telephone
Cooperative, Inc.*

Dear Ms. Bailey:

On behalf of my client, Sandhill Telephone Cooperative, Inc. ("Sandhill"), I am responding to your letter dated June 9, 2011 requesting that Sandhill enter into negotiations for an interconnection agreement with Time Warner Cable Information Services (South Carolina) ("TWCIS (SC)").

Sandhill does not believe TWCIS (SC)'s request falls within Section 251 of the Telecommunications Act because it does not appear that TWCIS is requesting interconnection for the purpose of providing telecommunications service over the interconnection arrangement.

Sincerely,

J. Lans Chase
John Staurulakis, Inc.

cc: Irvin B. Williams, Sandhill Telephone Cooperative, Inc.
Evelyn Graham, Sandhill Telephone Cooperative, Inc.

HEADQUARTERS:

7852 Walker Drive, Suite 200, Greenbelt, MD 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, e-mail: jsi@jsitel.com

Echelon Building II, Suite 200
9430 Research Boulevard, Austin, TX 78759
phone: 512-338-0473, fax: 512-346-0822

Eagandale Corporate Center, Suite 310
1380 Corporate Center Curve, Eagan, MN 55121
phone: 651-452-2660, fax: 651-452-1909

547 South Oakview Lane
Bountiful, UT 84010
phone: 801-294-4576, fax: 801-294-5124

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)

EXHIBIT 3

**TIME WARNER CABLE LETTER TO
JSI DATED JULY 13, 2011**



July 13, 2011

VIA OVERNIGHT MAIL

J. Lans Chase
John Staurulakis, Inc.
6849 Peachtree Dunwoody Road
Building B-3, Suite 200
Atlanta, GA 30328

Re: Sandhill Telephone Cooperative, Inc.'s Duty to Interconnect and Exchange Traffic with Time Warner Cable Information Services (South Carolina), LLC

Dear Mr. Chase:

I am writing to respond to your letter dated July 5, 2011 regarding the request of Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") to negotiate an interconnection agreement with Sandhill Telephone Cooperative, Inc. ("Sandhill"). The letter asserts Sandhill's misinformed belief that it is not required to interconnect and exchange traffic with TWCIS pursuant to Section 251 of the Communications Act of 1934, as amended (the "Act"). To the contrary, rulings by the South Carolina Public Service Commission ("PSC") and Federal Communications Commission ("FCC") unequivocally confirm that TWCIS is a telecommunications carrier entitled to interconnection.

As you know, TWCIS holds a certificate of public convenience and necessity ("CPCN") to provide telecommunications services in the State of South Carolina, including within the exchanges served by Sandhill. In granting TWCIS a CPCN, the PSC concluded in no uncertain terms that (1) "TWCIS is a provider of local exchange and interexchange telecommunications services;" (2) "TWCIS is a 'telephone utility,'" and (3) TWCIS's "Digital Phone Service is a regulated telecommunications service."¹ TWCIS also has a tariff for local exchange services on file with the PSC. The FCC has made clear that an entity's possession of a CPCN and its publication of tariffs constitute sufficient evidence of its status as a telecommunications carrier under federal law, not just under state law.²

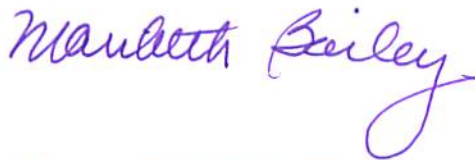
¹ Amended Order Granting Amendments to Certificates of Public Convenience and Necessity, Order No. 2009-356(A), Docket Nos. 2008-325-C through 2008-329-C, at 20 (June 11, 2009); *see also id.* at 22 (determining that "TWCIS continues to meet all statutory requirements for the provision of service as a CLEC" in South Carolina).

² *See, e.g., Fiber Techs. Network, L.L.C. v. N. Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392, 3399 ¶ 20 (2007) (finding that Fibertech is a

Furthermore, the FCC has left no doubt that the unsettled classification of retail VoIP service has no bearing on an interconnecting carrier's entitlement to interconnection.³ Indeed, the FCC took pains to issue two declaratory rulings to prevent the very anticompetitive conduct in which Sandhill is engaging.

This unequivocal authority forecloses your claim that TWCIS would not "provid[e] telecommunications service over the interconnection arrangement." Indeed, there is not a single state commission or court decision endorsing your argument. I therefore request that you or another Sandhill representative contact me without further delay so that we may begin negotiating an agreement by which Sandhill would carry out its statutory obligations. TWCIS reserves all of its legal rights and remedies in connection with Sandhill's unjustified refusal to negotiate an interconnection agreement.

Sincerely,



cc: Irvin B. Williams
Evelyn Graham

telecommunications services in combination with tariffs established that Fibertech offers a telecommunications service); *Bright House Networks, LLC v. Verizon Cal., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 ¶ 39 (2008) (finding a provider's CPCN to be "public notice of ... intent to act as a common carrier"), *aff'd*, *Verizon Cal., Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

³ *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act, as Amended*, Declaratory Ruling, WC Docket No. 10-143, GN Docket No. 09-51, CC Docket No. 01-92, FCC 11-83, ¶ 26 (rel. May 26, 2011); *see also Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

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)

EXHIBIT 4

**MCNAIR LAW FIRM
LETTER TO TIME WARNER CABLE
DATED JULY 19, 2011**

July 19, 2011

Margaret M. Fox

pfox@mcnair.net
T (803) 799-9800
F (803) 753-3219

Maribeth Bailey
Sr. Director, Interconnection Policy, Regulatory
Time Warner Cable
60 Columbus Circle
New York, New York 10023

Dear Ms. Bailey:

I am responding to your letter to Lans Chase of John Staurulakis, Inc., dated July 13, 2011, regarding the request of Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") for direct interconnection with Sandhill Telephone Cooperative, Inc. ("Sandhill").

As you know, TWCIS is currently providing services in the rural areas served by Farmers Telephone Cooperative, Fort Mill Telephone Company, Home Telephone Company, and PBT Telecom ("RLECs"). It is doing so through a wholesale partner, Sprint. As you also are no doubt aware, TWCIS has requested direct interconnection with the RLECs, and there is an ongoing dispute as to whether or not TWCIS is entitled to direct interconnection, in its own right as a telecommunications carrier, with those RLECs. The merits of that issue will be addressed in the arbitration proceedings in Docket Nos. 2011-243-C through 2011-246-C that are scheduled to be heard by the Public Service Commission of South Carolina ("Commission") on August 29, 2011.

As you may also know, when TWCIS sought to be certificated to provide local service in Sandhill's service area in Docket No. 2011-52-C, Sandhill agreed not to oppose the application with the express caveat that its non-opposition was "based on its understanding that [TWCIS was] seeking the same authority that was granted by the Commission in Order No. 2009-356 with respect to other rural LECs' service areas, subject to the same terms and conditions as stated therein." See TWCIS' Motion for Expedited Review of Application, at para. 2. A final order on TWCIS' application to provide service in Sandhill's area has not yet been issued by the Commission.

McNair Law Firm, P. A.
1221 Main Street
Suite 1600
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

As we believe we have made clear, Sandhill's position regarding interconnection is the same as the RLECs' position in this matter, i.e., that TWCIS is not entitled to direct interconnection for the purpose of exchanging non-telecommunications traffic. We understand TWCIS disagrees with that position. We anticipate that the issue will be fully addressed and resolved in the pending arbitration dockets.

Very truly yours,

McNAIR LAW FIRM, P.A.

A handwritten signature in blue ink, reading "Margaret M. Fox". The signature is fluid and cursive, with the first name "Margaret" being more prominent than the last name "Fox".

Margaret M. Fox

MMF:rwm

cc: Lans Chase, JSI
 Irvin B. Williams, Sandhill
 Susan Melton, Sandhill